D.P.U. 94-162

Joint petition of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, Fitchburg Gas and Electric Light Company, and Western Massachusetts Electric Company, pursuant to 220 C.M.R. § 2.02, for approval by the Department of new regulations to govern the companies' integrated resource planning and procurement process.

APPEARANCES: William S. Stowe
Assistant General Counsel
800 Boylston Street
Boston, Massachusetts 02199
FOR: BOSTON EDISON COMPANY
Petitioner

John Cope-Flanagan
Regulatory Attorney
One Main Street
P.O. Box 9150
Cambridge, Massachusetts 02142-9150
FOR: CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY
Petitioner

Paul B. Dexter, Esq.
LeBoeuf, Lamb, Greene & MacRae
260 Franklin Street
Boston, Massachusetts 02110-3173
FOR: FITCHBURG GAS AND ELECTRIC LIGHT COMPANY
Petitioner

Stephen Klionsky

Senior Counsel
Northeast Utilities Service Company
260 Franklin Street, 21st Floor
Boston, Massachusetts 02110-3179
FOR: WESTERN MASSACHUSETTS ELECTRIC COMPANY
Petitioner

Scott Harshbarger, Attorney General
By: George B. Dean
Frank Pozniak
Assistant Attorneys General
131 Tremont Street
Boston, Massachusetts 02111
Commenter

Robert Ruddock, Esq.
Senior Vice President
Energy & Environment Programs
Associated Industries of Massachusetts
222 Berkeley Street
Boston, Massachusetts 02117-0763
Commenter

Rebecca Calahan Klein, Vice President
Debra Hall, Regional Director
Business for Social Responsibility Education Fund
29 Temple Place, Second Floor
Boston, Massachusetts 02111
Commenter

Robert Sydney
General Counsel
Division of Energy Resources
100 Cambridge Street, 15th Floor
Boston, Massachusetts 02202
Commenter

Robert D. Shapiro, Esq.
Rubin & Rudman
50 Rowes Wharf
Boston, Massachusetts 02110
FOR: COALITION OF NON-UTILITY GENERATORS
Commenter

Robert H. Russell
Staff Attorney
Conservation Law Foundation
62 Summer Street
Boston, Massachusetts 02110
Commenter

Stephen L. Cowell
President
Conservation Services Group
441 Stuart Street
Boston, Massachusetts 02116
Commenter

David A. Fazzone, Esq.
McDermott, Will & Emery
75 State Street
Boston, Massachusetts 02109-1807
FOR: EASTERN EDISON COMPANY
Commenter

Bruce F. Paul
The Energy Consortium
Suite #612
181 Elliott Street
Beverly, Massachusetts 01915
Commenter

W. Curtis Collyer, Vice President
IRATE, INC.
P.O. Box 1316
Brewster, Massachusetts 02631
Commenter

Thomas G. Robinson, Esq.
25 Research Drive
Westborough, Massachusetts 01582-0005
FOR: MASSACHUSETTS ELECTRIC COMPANY
Commenter

Paul W. Gromer, Esq.
60 Thoreau Street, Suite 234
P.O. Box 9116
Concord, Massachusetts 01742-9116
FOR: MASSACHUSETTS ENERGY EFFICIENCY COUNCIL
Commenter

Peter W. Brown, Esq.
President
New England Cogeneration Association
1040 Great Plains Avenue
Needham, Massachusetts 02192
Commenter

Robert J. Moore, Esq.
141 Spring Street
Lexington, Massachusetts 02173
FOR: RAYTHEON COMPANY
Commenter

I. INTRODUCTION

A. Procedural History

On November 15, 1994, Boston Edison Company ("BECo"), Cambridge Electric Light Company and Commonwealth Electric Company ("COM/Energy"), Fitchburg Gas and Electric Light Company ("Fitchburg"), and Western Massachusetts Electric Company ("WMECo") (together, the "Companies") petitioned the Department of Public Utilities ("Department"), pursuant to 220 C.M.R. § 2.02, for approval of new regulations ("Proposed Rules") to govern the Companies' integrated resource planning ("IRP") and resource procurement processes. The petition was docketed as D.P.U. 94-162.

In their petition, the Companies stated that the Department's integrated resource management ("IRM") regulations could be streamlined and that streamlining would be of major benefit not only to the Companies but also to the Department, intervenors, and consumers. The Companies stated that their proposed streamlined procedures closely track the IRP procedures approved by the Department for application to Massachusetts Electric Company ("MECo") and Eastern Edison Company ("EECo"), which operate within the regional New England Electric System ("NEES") and Eastern Utilities Associates ("EUA"), respectively, in Massachusetts Electric Company, New England Power Company, Montaup Electric Company, Eastern Edison Company, D.P.U. 93-138/157-A (1994) ("Regional IRP Procedures").[1]

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[1] Throughout this Order, the Department distinguishes among (a) the IRP rules petitioned for by the Companies ("Proposed Rules"), (b) the IRM regulations in force as of the date of this Order ("existing IRM regulations" or "Existing 220 C.M.R. §§ 10.00 et seq."), and (c) the revised IRP rules put into effect by this Order ("Revised IRP

(continued...)

Written initial comments on the Companies' Proposed Rules were filed on January 6, 1995. Written reply comments were filed on January 18, 1995, January 25, 1995, and February 8, 1995. On March 7 and 8, 1995, the Department held two hearings on the Companies' proposal at its offices in Boston. Final reply comments were filed on March 14, 1995 and March 20, 1995. The Companies responded to seven information requests.

Comments were filed by the Attorney General of the Commonwealth ("Attorney General"), Associated Industries of Massachusetts ("AIM"), the Business for Social Responsibility Education Fund, the Division of Energy Resources ("DOER"), the Coalition of Non-Utility Generators ("CONUG"), the Conservation Law Foundation ("CLF"), Conservation Services Group, EECo, the Energy Consortium, IRATE, MECo, the Massachusetts Energy Efficiency Council ("MEEC"), New England Cogeneration Association ("NECA"), and Raytheon Company.[2] On some procedural issues, the Attorney General, CONUG, CLF, and DOER filed

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(...continued)
Rules" or "Revised 220 C.M.R. §§ 10.00 et seq.").

[2] In its initial comments, DOER focused on its own "wires access" proposal, rather than on the Proposed Rules filed by the Companies (DOER Initial Comments at 1). Specifically, DOER proposed that, as an alternative to building or purchasing new resources, electric companies be permitted in the IRM process to provide access to their transmission and distribution system to customers and third parties who would accept responsibility to meet customer supply needs (id. at 2). The following commenters filed comments that primarily addressed the DOER proposal: AIM; Business for Social Responsibility Education Fund; EECo; the Energy Consortium; IRATE; NECA; and Raytheon Company.

After reviewing the DOER proposal, the Department determined that a comprehensive review of the proposal would be more efficiently undertaken in the Department's investigation into electric industry restructuring, D.P.U. 95-30. Accordingly, the Department has limited the scope of this Order to consideration of the Proposed Rules (see February 17, 1995 Notice at 1).

jointly with the Department. In this Order, the Department refers to these four commenters as the Non-Utility Interests when discussing their joint filings.

In promulgating the Revised IRP Rules, the Department has reviewed and considered all comments received in the course of this proceeding. The Revised IRP Rules, attached to this Order, are based on the Proposed Rules, which have been modified, improved, and clarified with reference to the many comments received and hearings held by the Department. In this Order, the Department does not repeat and summarize all aspects of the Proposed Rules or the existing IRM regulations because most of this ground has been well covered by previous Department Orders.[3] Rather, the Department addresses only those areas in which substantive changes were proposed and considered. Accordingly, the Department has not sought to summarize in detail all comments that have been filed in response to the proposed regulations, but rather to discuss comments in the context of the major issues addressed in the Order.

B. Request for a Public Hearing and a Technical Session

On December 5, 1994, the Non-Utility Interests requested that the Department schedule a technical session and public hearing regarding the Proposed Rules. The Non-Utility Interests argued that a technical session and public hearing were required for the following reasons: (1) the Department held public hearings before promulgation of the existing IRM regulations, as well as before issuance of the Regional IRP Procedures for EECo and MECo in D.P.U. 93-138/157-A; (2) the absence of a technical session and public hearing would hamper the Department's ability to

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[3] See D.P.U. 93-138/157-A; Investigation into Ratemaking Treatment for New Generating Facilities, D.P.U. 86-36-A through D.P.U. 86-36-G; and IRM Rulemaking, D.P.U. 89-239 (1990).

understand the full effect of the Proposed Rules; and (3) the Proposed Rules do not address how any new resource procurement framework would comport with various electric industry restructuring scenarios (December 5, 1994 Non-Utility Interests Letter). The Companies disagreed with the need for a technical session and public hearing, arguing that there is no statutory requirement for a technical session in G.L. c. 30A; that technical sessions are more appropriate in proceedings where there are complex technical issues, which is not the case here; and that a public hearing would likely evoke comments duplicative of the written comments submitted (December 7, 1994 Companies Letter at 2; Companies Reply Comments at 4).

The Department finds that a technical session is not necessary in this proceeding because there are no complex technical issues. The Department did hold two public hearings in order to question the Companies and commenters on the details of their positions. The transcripts of these hearings are part of the record in this proceeding.

In its testimony before the Department, CONUG repeated its request for an opportunity to work with the Department, the petitioners, and other commenters to develop "workable" IRM reform (Tr. 2, at 16). The Companies responded with their assessment that such a process would be drawn out, inconclusive, and would likely go far beyond the scope of this proceeding (id. at 116). In D.P.U. 93-138/157-A at 14, the Department stated that it was interested in receiving "recommendations for streamlining resource planning and procurement in ways that preserve those elements of the ... IRM process that are essential to protecting the public interest." The Companies' proposal is responsive to the Department's invitation in D.P.U. 93-138/157-A and forms an adequate basis on which to proceed now without further delay.

C. Comparison With Regional IRP Procedures

The Companies stated that they filed the Proposed Rules as an incremental step in the context of larger issues that must be addressed concerning the resource planning of electric utilities (Companies Final Comments at 2). As such, the Companies stated that they filed rules that "are equivalent in most respects to the resource planning and procurement rules approved by the Department for MECo and EECo" (Companies Reply Comments at 11). The Companies argued that fairness and equity require that the same streamlined resource planning rules that are applied to MECo and EECo also should be applied to the Companies (id.). In addition, the Companies argued that (1) there is no valid distinction between the regional companies and the jurisdictional companies, because they all operate in the same regional power market; and (2) the Regional IRP Procedures are more efficient and less costly to implement than the existing IRM regulations (id. at 11-12).

The Attorney General, CONUG, and CLF argued that there is no reason to treat the jurisdictional utilities like the regional utilities because the former are not interstate companies subject to resource planning decisions of other state jurisdictions or of the Federal Energy Regulatory Commission ("FERC") (Attorney General Initial Comments at 7-8; CONUG Initial Comments at 13-16; CLF Initial Comments at 7-8). CONUG stated that the Department, in D.P.U. 93-138/157-A, "acknowledged the unique set of circumstances faced by utilities attempting to coordinate resource procurement practices in more than one jurisdiction" (CONUG Initial Comments at 15). CONUG contended that the Department historically has treated MECo and EECo differently than the other electric companies because of the multiple jurisdictions in

which their parent companies operate (e.g., MECo and EECo do not submit fuel charge petitions nor subject their generating units to performance reviews pursuant to G.L. c. 164, § 94G) (CONUG Reply Comments at 6). CLF asserted that there is an "as-yet unresolved jurisdictional question ... [regarding] whether the Department has the authority to mandate that all-requirements, registered holding companies operating in multi-state territories (i.e., NEES and EUA) participate in the Massachusetts IRM process (CLF Initial Comments at 8).

The Department finds that the multiple jurisdictions in which NEES and EUA operate distinguish MECo and EECo from the jurisdictional companies. Therefore, the Department finds that reasonable distinctions may be drawn between the regional and jurisdictional electric companies for purposes of reviewing and approving resource procurement decisions.

D. Massachusetts Environmental Policy Act

In its initial comments, CLF contended that the Department is required to undertake formal environmental review, pursuant to G.L. c. 30, §§ 61 et seq. ("Massachusetts Environmental Policy Act" or "MEPA"), in connection with its review of the Companies' proposed changes to the existing IRM regulations (CLF Initial Comments at 11-12). Specifically, CLF argued that a number of the amendments to IRM proposed by the Companies meet the threshold for environmental review set forth in the MEPA regulations at 301 C.M.R. § 11.27(1)(a), i.e., "[p]romulgation of regulations which lessen the stringency of existing regulations of which a primary purpose is to protect the environment" (id.; CLF Reply Comments at 6).

In their reply comments, the Companies contended that CLF's claim was incorrect,

because protection of the environment is not a primary purpose of either the existing IRM regulations or the Proposed Rules (Companies Reply Comments at 5). The Companies also noted that the Department did not conduct a MEPA review when it promulgated either the existing IRM regulations or the Regional IRP Procedures (id. at 6).

Contrary to CLF's assertion of the applicability of 301 C.M.R. § 11.27(1)(a), environmental protection is not a "primary purpose" of the IRM regulations. The purpose of these rules is explicitly stated in 220 C.M.R. § 10.01(1): "to establish procedures by which additional resources are planned, solicited, and procured to meet an investor-owned electric company's obligation to provide reliable electrical service to ratepayers at the lowest total cost to society."[4] Also, the Supreme Judicial Court's recent ruling in Massachusetts Electric Company v. Department of Public Utilities, 419 Mass. 239 (1994) served to clarify the Department's statutory authority to apply its "lowest total cost to society" test. While the Court accepted "the [D]epartment's conclusion that the acceptability of a potential provider of electric power should be determined in part by the potential cost to the utility of that source's likely pollution of the environment" and agreed that "it is also appropriate to consider that the increased costs that will result from the selection of another power source will be mitigated by long-term economic benefits in the form of lower costs to comply with increasingly stringent environmental regulations," the Court found that "[t]he [D]epartment does not now have delegated authority to consider the over-all impact of pollution on society in the course of carrying out its regulatory

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[4] The purpose section of the existing IRM regulations also states that the regulations "establish the level of costs for additional resources that is proper, just, reasonable, required by the public interest, and recoverable through retail rates charged to customers of electric companies." Existing 220 C.M.R. § 10.01(1).

functions." Massachusetts Electric, 419 Mass. at 246-247.

In a recent Order, the Department responded to the Court's Decision by focusing on environmental costs that can be reasonably foreseen or anticipated and that could affect ratepayers as ratepayers. Boston Edison Company, D.P.U. 95-1-CC at 12 (1995). Accordingly, while environmental compliance or similar costs are appropriate to take into consideration in determining whether a resource is safe, reliable, and least-cost, the Department concludes that this is far different from taking these factors into consideration in order to further environmental protection as a primary purpose, as CLF asserts. Furthermore, CLF's reliance on G.L. c. 164, § 69I as a basis for MEPA jurisdiction is misplaced. Even where Section 69I may serve as a basis for a regulation, the terms of that section expressly exempt from MEPA jurisdiction any actions taken under Section 69I.[5]

II. RESOURCE PLANNING POLICY

The Department, in D.P.U. 93-138/157-A at 14, stated that it was interested in recommendations for streamlining the IRM process in ways that are consistent with the Department's resource planning objectives. The Department's objective with respect to electric companies' resource planning and procurement remains as stated in the existing IRM regulations: that is, to ensure that each of the investor-owned electric companies in Massachusetts meets its obligation to provide safe, reliable, and least-cost electric service to ratepayers. See Existing 220 C.M.R. § 10.01.

The Department notes that the development of the existing IRM regulations was

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[5] The existing IRM regulations do not, in fact, cite Section 69I as a statutory basis for regulatory authority.

motivated, in large part, by changes in the electric industry. In D.P.U. 86-36-A at 11, the Department stated that "the generation segment of the electric industry ... [has undergone] a significant change in its cost structure .... In recognition of these fundamental changes occurring in the electric industry, it is appropriate to consider whether changes in the regulatory process are necessary."

As reflected in two recent Department proceedings, the electric industry currently is undergoing significant changes that should result in a more competitive industry structure. See Order on Incentive Regulation, D.P.U. 94-158 (1995); Notice of Inquiry on Electric Industry Restructuring, D.P.U. 95-30 (1995). Although the future shape of the electric industry remains uncertain, it is clear that competitive market forces will play an increasingly important role. In this proceeding, the Department addresses whether the existing IRM regulations can be modified in ways that (1) are consistent with the Department's resource planning objective of safe, reliable, least-cost electric service to ratepayers; and (2) reflect the movement toward a more competitive electric industry and the need for electric companies to be able to respond quickly and effectively in such an industry.[6]

In the series of orders that accompanied the development of the existing IRM regulations,[7]

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[6] We expect the rules we adopt here to improve the regulatory environment for electric utility resource planning. But even these improved IRP rules may gradually be overtaken by events. For example, the Department's investigation of electric industry restructuring in D.P.U. 95-30 has raised many questions whose answers may lead to substantial changes in the industry. These changes are likely to require revisions to the regulatory review process. Accordingly, the Department will review the implementation of these rules as the competitive market develops.

[7] These Orders are D.P.U. 86-36-A through D.P.U. 86-36-G and D.P.U. 89-239.

the Department addressed the importance of establishing the appropriate balance between affording electric companies flexibility in resource acquisition and reviewability, and between utility participation in their own solicitations and providing protection from utility self-dealing. D.P.U. 89-239, at 3. The Department stated that its "goal of optimizing the electric power industry cannot be realized if electric companies are locked into a rigid regulatory structure that does not allow modifications to acquisition criteria as conditions change with time." D.P.U. 86-36-G, at 32 (1989).

The movement toward a more competitive industry should provide strong incentives for electric companies to seek to minimize their resource procurement costs, potentially reducing the degree of regulatory oversight needed. As the Department stated in D.P.U. 86-36-A at 12, "[w]here competition begins to emerge in business segments previously exhibiting natural monopoly characteristics, it may be appropriate or even essential that regulatory constraints be removed in favor of competitive market forces." See also Boston Gas Company, D.P.U. 88-67, Phase I, at 123 (1988).

During the transition to a more competitive electric industry, however, electric companies will continue to exercise significant market power in the provision of generation, transmission and distribution services, and will continue to be the sole provider of electric service to many customers. Some degree of Department review of electric company resource planning activities during the transition period will thus be required to ensure that those activities are consistent with (1) the interests of a company's customers, and (2) the continuing development of a competitive

market for wholesale generation.[8]

As a final matter, the Department notes that, under the existing IRM regulations, the recovery of costs associated with resources procured pursuant to, and consistent with, an approved resource plan is deemed to be preapproved (i.e., the costs associated with those resources may be recovered from ratepayers with limited future Department review). Existing 220 C.M.R. § 10.06(4)(a). The Revised IRP Rules retain the preapproval provision. Revised 220 C.M.R. § 10.07(1). In large part, the breadth of Department review that remains incorporated in the Revised IRP Rules results from this provision.[9] In the Notice of Inquiry issued in D.P.U. 95-30, at 16, the Department sought comments regarding whether preapproval of resource acquisition costs is consistent with the development of a competitive electric industry. In this Order, the Department advises the companies that requests for exceptions to the preapproval provision, pursuant to Revised 220 C.M.R. § 10.08, will be given full consideration. Where such a request is made, cost recovery will be addressed during base-rate proceedings once resources become operational, and the scope of the Department's up-front review of a company's planned resource procurement activities consequently would be minimized.

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8 The Department previously has stated that, in the absence of a competitive marketplace for generation options, the ability to rely on market forces rather than pervasive economic regulation would be severely constrained. D.P.U. 86-36-C at 3-4.

9 The Commission considered eliminating preapproval in the Revised IRP Rules. The record, however, was not sufficiently developed to warrant doing so at this time. The issue of preapproval will need revisiting as the restructuring of the electric industry develops.

III. THE PROPOSED RULES

A. Introduction

In this section of the Order, the Department reviews the Proposed Rules submitted by the Companies, focusing on those provisions of the Proposed Rules that represent substantive modifications to the existing IRM regulations. For each of these provisions, the Department (1) describes the ways in which the Proposed Rules differ from the existing IRM regulations; (2) presents a summary of the comments received regarding these provisions; (3) addresses whether the Proposed Rules are consistent with the Department's resource planning objectives, as discussed in Section II, above; and (4) states how that provision is addressed in the Revised IRP Rules.

B. Purpose and Scope/Definitions

1. Purpose

The Purpose section in the Proposed Rules is, for the most part, identical to that in the Regional IRP Procedures.[10] As such, the Purpose section of the Proposed Rules does not include the language in the existing IRM regulations regarding cost recovery. Proposed Rules Section I; Existing 220 C.M.R. § 10.01(1). However, unlike the Regional IRP Procedures, the Proposed Rules explicitly address cost recovery issues in a manner that is almost identical to the manner that cost recovery is addressed in the existing IRM regulations. See Proposed Rules Section V.E; Existing 220 C.M.R. § 10.06(4). Therefore, the Department has included in the Purpose section of the Revised IRP Rules language regarding cost recovery that is equivalent to the cost recovery

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[10] As discussed in Section I.A, above, the Companies indicated that the Proposed Rules closely track the Regional IRP Procedures.

language in the existing IRM regulations. See Revised 220 C.M.R. § 10.01(1).

2. Affected Utilities

During formulation of the existing IRM regulations, the issue of granting a blanket exception to all of the rules for small electric companies was raised. The Department's primary concern in that regard was whether the ratepayers of the small companies (namely, Fitchburg and Nantucket Electric Company ("Nantucket")) would be better served by requiring those companies to participate in the IRM process or through the use of a modified procedure. D.P.U. 89-239, at 48. The question then was whether the administrative cost and burden on a small electric company would exceed the benefits to be gained through the IRM process. Id. Because of its very small relative size and its unique geographic characteristics, Nantucket was exempted from the IRM requirements, with the proviso that Nantucket develop an aggressive DSM program and continue to be subject to the Energy Facilities Siting Council's ("Siting Council")[11] supervision for forecast and supply plans. Id. at 49. While Fitchburg requested that the Department adopt a flexible implementation approach under which small companies could obtain waivers from specific provisions of the rules, Fitchburg did not receive a general exception to the regulations at that time. Id. at 48-49.

Since the implementation of the IRM regulations in 1990, Fitchburg has participated in one cycle of resource planning and review in D.P.U. 92-181 (1993). Fitchburg testified in the

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[11] When the IRM regulations were originally promulgated in 1990, the Siting Council was responsible for reviewing company demand forecasts and supply plans to determine the resource need for subsequent stages of the IRM process. D.P.U. 86-36-G at 68. In 1992 the Siting Council was merged with the Department and the Department assumed responsibility for reviewing demand forecasts and supply plans and determining resource need. G.L.c 164, § 69I; St. 1992, c. 141.

instant docket that there was not even enough interest in the Fitchburg IRM case to generate a settlement (Tr. 1, at 30). Fitchburg also stated that it likely would never have a capacity need great enough to justify the level of administrative cost and regulatory review of the type required by the existing IRM regulations (id. at 27-28). However, Fitchburg stated that it would continue to evaluate resources on an integrated basis and to solicit resources through competitive bidding (id. at 25, 41). In addition, Fitchburg stated that for a small company like itself, flexibility is necessary in order to allow it to solicit small amounts of capacity without the administrative burden of a formal, mandatory request for proposals ("RFP") (id. at 40-43). Finally, Fitchburg addressed the issue of utility company self-dealing by contending that it is not interested in becoming an equity participant in a plant or in building generating plants, and that any of the purchases it might make would be subject to Department review pursuant to the provisions of G.L. c. 164, § 94A (id. at 48).

One of the Department's goals in revising the existing IRM regulations is to provide flexibility in resource procurement to the companies under the Department's jurisdiction while continuing to ensure that there is a safe, reliable, least-cost supply of electricity available to ratepayers. The Department recognizes that electric companies of different sizes have different needs and that requirements appropriate for a large company may be inappropriate for a small company. The fact that Fitchburg's IRM filing failed to generate interest anywhere but at the Department is a case in point. The Department concludes that the administrative burden was out of proportion to the benefits that parties may have achieved through the IRM review process. In addition, the Department notes that some of the UNITIL Companies, with which Fitchburg is

affiliated, are required to file an integrated resource plan in New Hampshire every two years. The Department further notes that the UNITIL Companies have a coordinated resource planning and procurement process that relies on a set of resource planning guidelines that are the same for all of the affiliated companies in the UNITIL system.[12]

The Department will therefore entertain a petition from Fitchburg for an exception to the Revised IRP Rules (Revised 220 C.M.R. § 10.08) to streamline its filing with the Department and to coordinate the review of the resource plans of the UNITIL Companies with the New Hampshire Public Utilities Commission. Accordingly, the Department may, upon petition by Fitchburg, permit the filing of pertinent information from the UNITIL Companies' New Hampshire filing as full or partial satisfaction of the filing requirement imposed by the Revised IRP Rules.

The Department further notes that, although the Revised IRP Rules still apply to EECo, MECo, Montaup Electric Company, New England Power Company, and Northeast Utilities ("NU"), all but NU remain subject to an exception to these rules pursuant to the Regional IRP Rules. Massachusetts Electric Company, New England Power Company, D.P.U. 93-138 at 15 (1993); Eastern Edison Company, Montaup Electric Company, D.P.U. 93-157 at 15 (1993). The exception granted to these companies under the existing IRM regulations shall remain in effect under the Revised IRP Rules adopted by this Order. NU is subject to the Revised IRP Rules only through its subsidiary, WMECo, and thus is not required to file a separate integrated resource

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[12] See The UNITIL System of Companies' Integrated Resource Plan for New Hampshire 1992-2006, filed with the New Hampshire Public Utilities Commission on April 30, 1992, and with the Department as a component of Fitchburg's filing in D.P.U. 92-181.

plan.

3. Definitions

The Revised IRP Rules amend the Definitions section of the Proposed Rules in the following ways: (1) the terms "Initial Resource Portfolio" and "Significant New Supply Side Commitments" have been eliminated; and (2) the term "Environmental Externalities" has been eliminated and the term "Total Cost to Society" has been replaced by "Least-Cost Electric Service," in response to Massachusetts Electric, 419 Mass. at 246-247.

C. IRP Filing Requirements

1. Frequency of IRP Filings

The existing IRM regulations state that "filings shall not be more frequent than 18 months, nor less frequent than 30 months ...." Existing 220 C.M.R. § 10.03(1). The Proposed Rules modify this language to state that IRP "filings shall not be less frequent than 24 months ...." Proposed Rules Section III.A. Only CONUG commented on this issue, stating that it supports this provision of the Proposed Rules (CONUG Initial Comments at 18). The Revised IRP Rules include this provision. Revised 220 C.M.R. § 10.03(1).

2. Settlement Issues/Elimination of the Draft Initial Filing

a. Description

With regard to settlement issues, the Proposed Rules differ from the existing IRM regulations in two ways. First, the Proposed Rules would eliminate the requirement included in the existing IRM regulations that a company submit a Draft Initial Filing eleven weeks before the filing date established by the Department. Existing 220 C.M.R. § 10.03(2)(a). The purpose of

the Draft Initial Filing is to support "meaningful discussion of the issues" during settlement negotiations. Id. A company then must submit a second document, its Initial Filing, at the conclusion of the eleven-week period allotted for settlement negotiations. Existing 220 C.M.R. § 10.03(2)(b). Under the Proposed Rules, a company would be required to submit only one filing, which would be used for both settlement negotiations and adjudication purposes, if necessary. Proposed Rules Section III.B.

Second, the Proposed Rules would eliminate the requirement included in the existing IRM regulations that a company sponsor at least one technical session eight weeks before the filing date established by the Department. Existing 220 C.M.R. § 10.03(4)(a). The Proposed Rules state that the Department may hold technical sessions "as the public interest requires, beginning approximately three months after [the IRP] filing." Proposed Rules Section IV.A.

b. Summary of Comments

CONUG and the Attorney General stated that they support the elimination of the requirement in the existing IRM regulations that companies submit a Draft Initial Filing (CONUG Initial Comments at 19; Attorney General Final Comments at 5). CONUG stated that "the draft initial filing is an unnecessary regulatory burden which operates to protract unnecessarily the resource procurement process. To the extent that the draft initial filing was designed to promote parties' understanding of a company's filing and thereby encourage settlement, CONUG believes that these goals can be achieved in other ways" (CONUG Initial Comments at 19). CONUG and the Attorney General recommended that the Department require an electric company to sponsor one technical session regarding its initial filing "early in the proceeding, concurrent with

settlement discussions" (id. at 20; accord, Attorney General Final Comments at 5).

c. Analysis and Findings

The Department fully supports the use of settlement negotiations as a means through which a company can satisfy its obligation to provide safe, reliable, least-cost electric service to ratepayers. The Department finds that the replacement of the two IRM filings (i.e., the Draft Initial Filing and the Initial Filing) with a single IRP filing should not impede settlement discussions. At the same time, elimination of the Draft Initial Filing will remove a regulatory burden and help to streamline the process. Therefore, the Revised IRP Rules do not require a Draft Initial Filing.

In response to the concern raised by the Attorney General and by CONUG regarding a technical session, the Revised IRP Rules include language that clarifies that the holding of a technical session need not be deferred until the completion of settlement discussions. Revised 220 C.M.R. § 10.04(1). Instead, the technical session may take place during settlement discussions, as the public interest requires. Id.

3. Demand Forecast

a. Description

With regard to a company's demand forecast, the Proposed Rules would modify the existing IRM regulations in three ways. First, the Proposed Rules would reduce the forecast period from 20 years to 15 years.[13] Proposed Rules Section III.E.2; Existing 220 C.M.R.

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[13] The Department notes that the modification to the length of the forecast period also applies to information regarding a company's resource inventory. See Proposed Rules Section III.F.1.

§ 10.03(6)(b).1.

Second, the Proposed Rules do not specify the "major determinants of total annual electric energy demand and seasonal peak demand" that a company must include in its demand forecast, whereas the existing IRM regulations specify at least seven major determinants that must be included. Proposed Rules Section III.E.3; Existing 220 C.M.R. § 10.03(6)(c)1. For two of the specified major determinants, natural conservation and load management ("C&LM")[14] and natural fuel switching, the existing IRM regulations also identify particular information that must be included in the demand forecast. Existing 220 C.M.R. § 10.03(6)(b).

Third, the Proposed Rules eliminate the current requirement that companies submit information regarding "capability responsibility based on NEPOOL practices and the company's reserve requirement." Proposed Rules Section III.E.2; Existing 220 C.M.R. § 10.03(6)(b)1.

b. Summary of Comments

CONUG stated that it supports (1) the reduction of the forecast period from 20 years to 15 years, and (2) the elimination of the information requirements regarding fuel switching (CONUG Initial Comments at 21). CONUG added that certain other information (e.g., demographic data, projected electric prices, the price elasticity of electric demand, and natural C&LM) need not be filed initially, provided that companies are required to submit this information during the course of any adjudication of a demand forecast if requested through discovery (id. at 21-22).

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[14] Natural C&LM is defined as "C&LM that will occur without the intervention of the electric company either as a direct supplier or as a purchaser of third party C&LM services." Existing 220 C.M.R. § 10.02.

The Attorney General stated that he supports the reduction of the demand and resource inventory forecast period from 20 years to 15 years (Attorney General Final Comments at 5). The Attorney General added, however, that the demand forecast section of the Proposed Rules should be revised to require information regarding (1) NEPOOL capability responsibility and the company's reserve requirement; (2) natural C&LM, including information on market transformation; (3) demographic data and economic activity; and (4) projected electric prices and the price elasticity of electric demand (Attorney General Initial Comments at 21-22). The Attorney General argued that this information "has always been provided by the Companies and represents key inputs into whatever methodology the electric company employs to forecast demand" (id. at 22). The Attorney General stated that neither the Department nor parties should "have to wait for discovery responses in order to obtain fundamental information necessary to make the need determination, when such information can be obtained from the outset" (Attorney General Final Comments at 6).

CLF stated that the elimination of data requirements regarding natural C&LM, including the levels of C&LM mandated by federal, state, and local governments, and fuel switching, would "undermine environmental (and least-cost) review" of a company's resource plan (CLF Initial Comments at 10).

c. Analysis and Findings

The Department will address each modification included in the Proposed Rules individually. First, because of the significant uncertainty associated with the later years of a 20-year demand forecast, the Department finds the value of the forecast for these later years to be

extremely limited. Therefore, the Department finds that the reduction in the forecast period from 20 years to 15 years would not have an impact on a company's ability to meet its obligation to provide safe, reliable, least-cost electric service to its ratepayers and would contribute to the streamlining of the IRP review process. Accordingly, the Revised IRP Rules include a 15-year forecast period. Revised 220 C.M.R. §§ 10.03(5)(b), 10.03(6)(a).

The Department expects that, even in the absence of specified demand forecast determinants, companies would continue to include factors such as demographics, economic activity and price elasticity in their demand forecasts. However, the Department finds that it is not appropriate for the Revised IRP Rules to specify the full list of demand forecast determinants; instead, a company should be afforded the flexibility to include those determinants that its management deems appropriate. If a company projects that natural C&LM and natural fuel switching will be significant factors in its demand forecast, then information on these factors would be incorporated into the demand forecast and would be included in the filing. If such information is not incorporated into a demand forecast, then this issue could be addressed through discovery. To ensure the reviewability of the demand forecast and to enable parties to understand better the assumptions that are incorporated into the demand forecast, the Revised IRP Rules include language from the existing IRM regulations that calls for the documentation and explanation of information included in the filing. Revised 220 C.M.R. § 10.03(5)(c).

Finally, with regard to the issue of NEPOOL capability responsibility and reserve requirements information, the Department finds that, since electric companies currently are required by NEPOOL to take into account these factors in determining their resource needs, this

information should be included in IRP filings. Because this information is more closely tied to a company's evaluation of resource need than to its demand forecast, this information requirement is included in the Evaluation of Resource Need section of the Revised IRP Rules. Revised 220 C.M.R. § 10.03(7)(b)2.

4. Resource Inventory

a. Description

With respect to a company's resource inventory, the Proposed Rules and the existing IRM regulations differ in two primary ways. First, the Proposed Rules would eliminate language included in the existing IRM regulations regarding the "extraordinary circumstances" under which the Department may exclude an existing resource from a company's resource inventory. Existing 220 C.M.R. § 10.03(7)(a).

Second, the Proposed Rules would reduce significantly the amount and type of data that must be filed for each existing and planned supply- and demand-side resource included in a company's resource inventory. For each existing and planned supply resource included in a company's resource portfolio, the existing IRM regulations specify a list of 21 and 18 data filing requirements, respectively. Existing 220 C.M.R. §§ 10.03(7)(b)2, 10.03(7)(b)4. The Proposed Rules would reduce these filing requirements to five data types: ownership, historical equivalent availability factor, unit capability, unit entitlement, and expected megawatt ("MW") contribution across the planning horizon. Proposed Rules Section III.F.2.a. Data for existing supply resources that would no longer be required by the Proposed Rules include information regarding a resource's fixed and variable costs, forced outage rate, heat rate curve, major pollution control

equipment, environmental impacts, permit restrictions which limit operation, in-service date, and remaining life of resource. Existing 220 C.M.R. § 10.03(7)(b)2. Data for planned supply resources that would no longer be required by the Proposed Rules include information regarding a resource's annual energy and capacity costs, forced outage rate, heat rate curve, anticipated retirement or purchase agreement termination date, and the status of various contracts and permits needed for the operation of the resource. Existing 220 C.M.R. § 10.03(7)(b)4.

For each existing and planned demand-side resource in a company's resource inventory, the Proposed Rules would require that a company report "the annual energy and capacity savings for each customer class." Proposed Rules Section III.F.2.a. For existing demand-side resources, the requirement to provide information regarding technologies installed, variable and per-unit costs, and measurement or monitoring procedures would be eliminated. Existing 220 C.M.R. § 10.03(7)(b)3. For planned demand-side resources, the requirement to provide information regarding technologies planned to be implemented, targeted market segments and end uses and the associated saturation levels, third-party project details and contracts, electric company programs, and major cost components would be eliminated. Existing 220 C.M.R. § 10.03(7)(b)5.

b. Summary of Comments

The Companies stated that "[o]ne of the major reasons for the Companies' IRM streamlining proposal is that the IRM regulations currently require a burdensome and unreasonable volume of data to be submitted as part of a utility filing" (Companies Reply Comments at 20). The Companies stated that they will "labor to comply with [all of] the Department's information requirements, whether the data be required in the streamlined rules," in

the Investigation by the Department of Public Utilities into the Effects of Implementation of the Clean Air Act, D.P.U. 93-112-A (1994), in 220 C.M.R. §§ 9.00 et seq., or elsewhere (id. at 22). The Companies added that "the fact that certain information is not required to be submitted as part of a filing ... does not mean that the Department and intervenors cannot request and obtain such information as a part of discovery" (id. at 21). Finally, the Companies contended that the "extraordinary circumstances" clause should not be incorporated into the Proposed Rules because (1) the IRM rules were predicated on the principle that the resources to be reviewed were those additional resources that utilities needed; (2) the Companies were unaware of any "serious attempt" to invoke the extraordinary circumstances standard in an IRM proceeding; and (3) other Department regulatory mechanisms (i.e., 220 C.M.R. §§ 9.00 et seq.) are already in place should an existing unit develop serious problems or require capital expenditures (id. at 23).

CONUG stated that, "of all the changes offered by the Companies, their proposal for revising the IRM rules regarding the resource inventory will most clearly and significantly disadvantage ratepayers and inhibit least-cost planning ... [because the Companies] will be able to avoid any public review of investments in existing units ..." (CONUG Initial Comments at 22-23). CONUG urged the Department to reject the Companies' proposal to eliminate the extraordinary circumstances provision of the existing IRM regulations, stating that, in light of the significant investments in existing units that compliance with the Clean Air Act Amendments of 1990 ["CAAA"] may require, "the time is right for expanding rather than eliminating the grounds for subjecting an existing unit to competition ..." (id. at 23). CONUG asserted that, if an electric company is not required to include certain information regarding existing supply resources (e.g.,

remaining life of resource, projected capital and O&M costs, and environmental costs) in its IRP filing, then the company's "decisions regarding investment in existing resources, for CAAA compliance or other reasons, would be completely insulated from Department review" (id. at 24). CONUG argued that, because the Proposed Rules would not require electric companies to provide CAAA compliance cost information in their IRP filing, the implementation of the rules would be inconsistent with the Department's directives in D.P.U. 93-112-A (id. at 24-25).

The Attorney General asserted that the net effect of the proposed changes regarding resource inventory "is to remove any possibility that an existing resource could be removed from the resource inventory and subjected to competition" (Attorney General Initial Comments at 9). The Attorney General argued that the elimination of certain cost and environmental information on existing resources and the elimination of the extraordinary circumstances provision would be inconsistent with (1) D.P.U. 93-112, in which the Department stated that a company's IRM proceeding is the appropriate forum to determine the cost effectiveness of projected CAAA compliance expenditures; and (2) G.L. c. 164, § 69I, which requires that an electric company's need forecast provide a necessary energy supply with the minimum impact on the environment at the lowest possible cost (id. at 11-12). As such, the Attorney General recommended that the Proposed Rules be revised to include the extraordinary circumstances provision and the resource information requirements included in the existing IRM regulations (id. at 13-15). The Attorney General argued that, "[i]f these recommendations are not adopted, then ... the costs of the poor performance of any existing resource, whether it be due to economics, environmental compliance, or availability, ... should be borne by shareholders and not ratepayers" (id.).

CLF asserted that the elimination of certain information requirements, in particular those regarding waste disposal, nuclear decommissioning costs, emissions data, and permitting restrictions, "will make it difficult if not impossible to determine whether an existing unit faces sufficient pollutant-reduction or decommissioning costs to warrant" its being subject to a competitive test (CLF Initial Comments at 10-11). CLF recommended that the Department retain those provisions of the existing IRM regulations that require disclosure of key environmental and decommissioning data in order (1) to be consistent with the Department's directives in D.P.U. 93-112-A, and (2) to not undermine the development of a competitive market for new and existing generation (id. at 12-13). In addition, CLF argued that the elimination of data requirements regarding a company's inventory of existing and planned DSM resources would undermine the environmental review of a company's resource plan (id. at 10).

c. Analysis and Findings

There are two ways for an existing facility to be subject to a competitive test under the existing IRM rules. The first is for an electric company to propose such a test in its filing. The second is for the Department to make a finding of extraordinary circumstances and require such a test. This discussion focuses on the second method.

In determining whether an existing resource should be subject to a competitive test under certain circumstances and what information pertaining to existing resources should be contained in a company's filing, it is appropriate to examine the rationale for the development of those portions of the existing IRM regulations that pertain to the resource inventory. In developing the IRM regulations, both the Siting Council and the Department found that, while the primary focus

of the regulations should be the acquisition of new resources, it would be appropriate under some circumstances to subject an existing resource to a competitive test even if a host electric company did not propose such a test. D.P.U. 89-239, at 11-16; IRM Rulemaking, 21 Decisions of the Massachusetts Siting Council ("DOMSC") 91, 126-131 (1990). The Department stated that "there may be rare occasions when economic, environmental or other relevant attributes of a resource may justify the use of the competitive solicitation process to determine the reasonableness of replacing that resource in a utility's resource portfolio." D.P.U. 89-239, at 11. The Siting Council stated that "[c]ompanies should evaluate existing generating units within a supply planning process when extraordinary circumstances result in a question about the reliability or economic advantages of those units when compared to other resource options." 21 DOMSC at 128, citing Boston Edison Company, 18 DOMSC 201, 254-255 (1989).

The Department finds that the rationale expressed in these decisions is still applicable. Electric companies may be faced with potentially large costs for bringing existing units into compliance with provisions of the Clean Air Act. In addition, there are ongoing efforts to introduce greater levels of competition into the electric industry. The Department has stated that it would consider, within the context of upcoming IRM proceedings, whether extraordinary circumstances arise that warrant "test[ing] the continued operation of [a particular] resource in the market of alternative investments through an IRM resource solicitation." D.P.U. 93-112-A at 16. The Department sees no reason at this time to exclude this possibility. Furthermore, with regard to the trend in the electric industry toward increasing competition, the Department finds that it would be inappropriate at this time to remove the language concerning extraordinary

circumstances, and thereby completely exclude existing resources from the possibility of being subject to a competitive test under the Revised IRP Rules should such extraordinary circumstances arise. Accordingly, the Department does not accept the Companies' proposal. The Revised IRP Rules continue to authorize the Department to make a determination that "extraordinary circumstances" warrant subjecting a resource to a competitive test.[15] Revised 220 C.M.R. § 10.03(6)(a). The Department notes that, as competitive markets unfold and/or appropriate incentive plans are put in place, companies will have a natural incentive to minimize their resource procurement costs, quite apart from any remaining regulatory review process. In such a world, all expense components of their resource portfolios will be subject to their careful management review and appropriate action.

With regard to the specific information that a company would be required to file concerning existing and planned resources, the Companies argued that the existing IRM requirements are unduly burdensome, but the Attorney General, CONUG, and CLF argued that the information is necessary to ensure that a company's investment in existing resources is subject to Department review as part of its resource plan. In the decisions leading to the adoption of the

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[15] The Revised IRP Rules retain the provision from the existing IRM regulations and the Proposed Rules that the unrecovered sunk investment associated with existing and planned resources that are replaced by new resources is recoverable from ratepayers. Revised 220 C.M.R. § 10.07(2). This provision refers specifically and uniquely to resources that are shown not to be cost-effective in an IRP competitive solicitation. The Department emphasizes that the inclusion of this provision in the Revised IRP Rules makes no pronouncement on the Department's position with regard to investments that might be "stranded" as a result of the restructuring of the electric industry. This provision has been retained pending resolution of the stranded investment issue in the Department's Electric Industry Restructuring proceeding, D.P.U. 95-30, or some later proceeding.

existing regulations, the Siting Council stated that information on existing and planned units would be used, among other things, to review the performance of existing units in cases of extraordinary circumstances.[16] 21 DOMSC at 131. Since the Department has determined that under extraordinary circumstances, existing resources should still be subject to a market test, it is appropriate to continue to require that certain information concerning existing units be submitted in a company's filing. However, the Department believes that the primary function of such information should be to assist the Department in evaluating whether extraordinary circumstances exist that warrant subjecting an existing unit to a competitive test. Thus, the Department concludes that it is not necessary for companies to submit a full range of information for existing units before any question regarding the existence of extraordinary circumstances has been raised. Accordingly, for each existing and planned unit in a company's resource inventory, the Revised IRP Rules require the filing of information included in the Proposed Rules, plus information regarding (1) projected costs associated with compliance with environmental regulations, and (2) the remaining life of the resource. Revised 220 C.M.R. § 10.03(6)(b)1.a. However, for each existing unit for which the costs or performance have differed significantly from projections in the previous two years or are projected to differ significantly in the coming five years, the Revised IRP Rules require that companies submit information that is equivalent to that required by the existing IRM regulations. Revised 220 C.M.R. § 10.03(6)(b)1.b.

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[16] The Siting Council also stated that the information would be used to ensure that the performance of existing units had been appropriately incorporated into a company's determination of need and to review the interaction of proposed new resources with the existing resource portfolio in the Department's review of new resources. 21 DOMSC at 131.

The Department concludes that by preserving the "extraordinary circumstances" language and requiring that a full range of information be filed concerning units where extraordinary circumstances might be present, it is not necessary to shift the risk of poor unit performance to shareholders in order to address the Attorney General's concerns.

With regard to existing DSM resources, the Revised IRP Rules require that information on capacity and energy savings be filed on a program basis, and that capacity savings be filed for both summer and winter peak demand periods. Revised 220 C.M.R. § 10.03(6)(b)2. For planned DSM resources, the Revised IRP Rules require that information on projected capacity and energy savings be filed on a program basis, that capacity savings be filed for both summer and winter peak demand periods, and that information be provided on a program's preapproval status. Revised 220 C.M.R. § 10.03(6)(b)3. Regarding CLF's concern about the elimination of data requirements on existing DSM programs, the Department notes that extensive information on electric company DSM programs is available to the public in the DSM Annual Reports filed with the Department.

Finally, the Department has included in the Revised IRP Rules language that establishes the standard of review for an electric company's resource inventory. Revised 220 C.M.R. § 10.03(6)(a)2 states that a company "shall demonstrate that the resource inventory is (1) reviewable, that is, the filing contains enough information and sufficient documentation to allow full understanding of the way in which the resource inventory was determined; (2) appropriate, that is, it uses assumptions regarding supply and DSM resources and their performance which are consistent with the Department's precedent and with generally accepted

industry performance standards; and (3) reliable, that is, it provides a measure of confidence that its data, assumptions, and judgments produce reliable projections of the capacity and energy, and capacity and energy savings, associated with the resource inventory."[17]

5. Evaluation of Resource Potential

a. Description

The Proposed Rules would eliminate the requirements in the existing IRM regulations that a company submit information regarding the technical potential of DSM in its service territory and the technical potential of life extensions or repowering at existing generating plants. Existing 220 C.M.R. § 10.03(9). Technical potential of DSM is defined as "the sum of potential capacity and energy savings that may be achieved by installing all state-of-the-art, commercially-available, conservation, load management, or fuel-switching technologies that yield the most energy and capacity savings for each end use in each customer class subsector, regardless of the cost or delivery mechanism." Existing 220 C.M.R. § 10.02. Technical potential of life extension and repowering are similarly based on "state-of-the-art, available technologies ..., regardless of the cost" of these technologies. Id.

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[17] Similarly, the Department has included in the Revised IRP Rules language that establishes the standard of review for an electric company's evaluation of resource need. Revised 220 C.M.R. § 10.03(7)(a) states that a company "shall demonstrate that the evaluation of resource need is (1) reviewable, that is, the filing contains enough information and sufficient documentation to allow full understanding of the evaluation method; (2) appropriate, that is, it uses a method that produces a forecast of resource need that is technically suitable to the size and nature of the electric company that produced it; and (3) reliable, that is, it uses a method that provides a measure of confidence that its data, assumptions, and judgments produce a forecast of resource need that is most likely to occur."

b. Summary of Comments

The Attorney General stated that the Proposed Rules should be revised to require the filing of information on the technical potential of DSM and the technical potential of life extension or repowering of existing generating units, although this information could be filed in a "less burdensome format than that contained in the current IRM regulations" (Attorney General Initial Comments at 14; Attorney General Final Comments at 5-6).

CLF stated that the elimination of the DSM information requirements included in the existing IRM regulations would make it more difficult to evaluate whether a company's DSM proposal is "effectively tapping the available DSM resource, and thus whether a necessary and least-cost energy supply with minimum environmental impact is being procured" (CLF Initial Comments at 13-14).

c. Analysis and Findings

In order to determine whether the requirement to provide information on the technical potential of DSM and the technical potential of life extensions or repowerings should be eliminated, the Department first reviews the rationale for the original requirement in the existing IRM regulations. The precursors to the IRM rules were several generic Department proceedings, Orders in base-rate cases for investor-owned utility companies, and the regulations implementing the Public Utility Regulatory Policies Act (PURPA), 220 C.M.R. §§ 8.00 et seq. Therein, the Department set forth its policies on demand- and supply-side resource procurement in the context of an electric company's least-cost planning processes.

During that period of time, electric companies were not aggressively pursuing DSM.

There were many perceived barriers to customer participation in DSM programs, and technical potential information was necessary to determine the DSM opportunities available to various customer sectors. See, e.g., Boston Edison Company, D.P.U. 85-266/85-271-A at 147-149 (1986); D.P.U. 86-36-F at 26-27 (1988); Cambridge Electric Light Company, D.P.U. 87-21-A (1988). In D.P.U 86-36-D (1988), the Department approved the formation of a collaborative to assess, inter alia, the technical potential of energy efficiency technologies for each customer sector in order to determine the opportunities available and design a template of DSM programs to be used by the electric companies in developing programs for their individual service territories.

In D.P.U. 86-36-F at 60-61, the Department stated that, in its IRM filing, each electric company was required to

> identify and project over the next twenty or more years all as-yet uncommitted C&LM potential in its service territory ... by end use, by sector or class, and by sub-sector ... where possible ... in order to help identify for the electric company and other potential C&LM providers the remaining demand-side program opportunities that exist in customer-owned and utility-owned installations ....

Since then, the electric companies in Massachusetts have developed and implemented DSM programs for all customer sectors and subsectors which have stimulated the market for energy efficiency and have begun to overcome many of the market barriers identified in the early years of their involvement with this resource. In addition, at the present time, energy efficiency technologies are being developed and promoted through a wide range of entities. Thus, while electric companies should continue to assess the potential for DSM opportunities in their service territories in order to develop least-cost plans, the Department finds that it is no longer necessary for companies to file detailed projections and estimates of the technical potential for DSM as part

of their IRP filings. Therefore, the Revised IRP Rules do not require the filing of such information.

Regarding the technical potential for life extensions and repowering of generating plants, competition for supply options on the wholesale level also was relatively undeveloped at the time of issuance of the existing IRM regulations. Thus, the Department required information to be included in a company's IRM filing that would describe "potentially viable but uncommitted plant life extensions and capacity upgrades ... that could represent large blocks of inexpensive power of which potential solicitation participants should be aware." D.P.U. 86-36-F at 61. Since then, the wholesale generation market has expanded and the regulated electric industry has become more competitive. The electric companies are increasingly concerned with retaining customers and providing least-cost electricity through competitive procurement of resources. Therefore, the Department concludes that information regarding the technical potential of a life extension to an electric company-owned plant is required only if the electric company submits a proposal for a life extension or repowering as its bid in response to an RFP issued in the course of its IRP proceeding. Accordingly, the Revised IRP Rules do not require companies to submit information regarding the technical potential of life extensions and repowerings of their existing generating plants.[18]

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[18] As stated in Section III.C.6.d, below, the Department expects that, if a company plans to meet an identified resource need through the life extension or repowering of an existing generating unit, the company would identify the life extension or repowering as a company-sponsored project proposal in its IRP filing and would subject that proposal to competition in the RFP process.

6. Resource Procurement Plan

a. Timing of Procurement

i. Description

With respect to the timing of a company's resource procurement activities, the Proposed Rules differ from the existing IRM regulations in two ways. First, the Proposed Rules would provide an electric company with the opportunity to present evidence that demonstrates that the procurement of additional resources before the filing of its next integrated resource plan is not in the ratepayers' interest, even if a need for additional resources were identified within a ten-year period. The Proposed Rules state that, "[b]ased on such evidence, the Department may find that the electric company need not issue an RFP." Proposed Rules Section III.H.2.a. The existing IRM regulations do not explicitly afford a company this opportunity, stating that "[r]esources shall be solicited to meet the additional resource need identified for each of the ten calendar years following the company's initial filing date." Existing 220 C.M.R. § 10.03(8)(b)2.

Second, the existing IRM regulations state that "[i]f no additional capacity need has been identified for those ten years, then the RFP shall be for energy or energy savings only." Id. The Proposed IRP Rules do not require an energy- or energy-savings-only RFP.

ii. Summary of Comments

The Companies stated that, although the existing IRM regulations do not contain a specific exemption from the requirement that additional resources be procured if need is identified within the ten-year resource planning window, the Department has applied IRM's general exception provision, Existing 220 C.M.R. § 10.07(5), to waive this requirement (Companies Final

Comments at 9). As such, the Companies contended that the exceptions allowed under the Proposed Rules are not "greatly different in practice" from those allowed under the existing IRM regulations (id.).

CONUG stated that it strongly opposes the provisions in the Proposed Rules that would allow an electric company the option to procure only a portion of its identified need, asserting that these provisions would allow a company to adopt a "no-planning" approach at no risk to its shareholders (CONUG Initial Comments at 28). CONUG urged the Department "to ensure a reliable, least-cost energy supply by requiring utilities to procure the resources necessary to meet their entire identified need" (id.). CONUG added that, if a company is granted the flexibility to defer procurement, then shareholders, and not ratepayers, should bear the costs associated with purchasing higher-priced resources at a later date (id. at 29).

The Attorney General stated that ratepayers may be placed "at inordinate risk in terms of reliability and cost" if companies are allowed to determine whether or not to procure additional resources in response to an identified need (Attorney General Initial Comments at 18-19). The Attorney General argued that, "[w]hile the Companies may make a prima facie showing that issuing an RFP would not be in the public interest, it is the Department which must determine what would be in the public interest after opportunity is given to all parties to examine the matter" (Attorney General Final Comments at 8).

MEEC stated that, "[i]n the worthy effort to streamline" the existing IRM regulations, the Proposed Rules delete the "critically important" requirement that utilities procure DSM that is "cost-effective on an energy-basis only, even when there is no capacity need" (MEEC Reply

Comments at 3). MEEC stated that, "where there is no capacity need, the method of procurement should not be mandated" (id. at 5). Instead, MEEC asserted that utilities should be allowed to develop their own procurement plans and should be required to demonstrate that these plans meet the Department's DSM policy objectives (id.).

iii. Analysis and Findings

The Department agrees with the Companies' contention that the opportunity in the Proposed Rules to request deferral of resource procurement until a subsequent IRP proceeding is not significantly different from policy and practice under the existing IRM regulations. It is important to note that, under both sets of procedures, an electric company would bear the burden of demonstrating that the deferral of resource procurement is in its ratepayers' best interest, and the Department would make the final determination regarding whether such a deferral is in the best interest of ratepayers. The Department finds that this provision of the Proposed Rules is reasonable and includes such provision in the Revised IRP Rules. Revised 220 C.M.R. § 10.03(8)(c).

With respect to the elimination of a required energy- or energy-savings-only RFP, the Department previously has granted exceptions to the existing IRM regulations with regard to energy-only RFPs, provided that a company can demonstrate that it has considered a wide range of energy-only resource options. See Investigation into Cost-Effective Energy Transactions, D.P.U. 93-154, at 10-12 (1993). Companies remain obligated to provide safe, reliable, least-cost electric service to their ratepayers. As such, even in the absence of a required energy- or energy-savings-only RFP, companies are required to consider a wide range of supply and DSM

resources that would minimize their costs on an energy-only basis. Therefore, the Department finds the elimination of a required energy- or energy-savings-only RFP to be reasonable. Accordingly, the Revised IRP Rules do not include this requirement.

Finally, the Department has included in the Revised IRP Rules language that establishes the standard of review for an electric company's resource procurement plan. Revised 220 C.M.R. § 10.03(8)(b) states that a company "shall demonstrate that the resource procurement plan is consistent with the purpose of these rules, as established in 220 C.M.R. § 10.01(1)."

b. SNSSCs/Filing of RFPs

i. Description

The Proposed Rules add a new category of resources, Significant New Supply Side Commitments ("SNSSCs"). A SNSSC is defined as a

> commitment which has been made by an electric company to either (1) enter into a new contract with a power supplier ...; or (2) construct a new generating project, which commitment (a) is effective or whose construction will commence after approval by the Department, (b) extends for a period of three years or longer, and (c) involves the purchase of an entitlement of at least 30 megawatts of additional capacity or requires the construction of a new generating unit having a total capacity greater than 30 megawatts.
>
> Proposed Rules Section II.

The Proposed Rules provide that, in the event that the resource need identified in the integrated resource plan filing is not sufficient to justify a SNSSC, an electric company would not be required to submit a proposed RFP with its IRP filing for Department review. Proposed Rules Section III.H.2.a. In addition, the Proposed Rules provide that the Department's review of a company's proposed supply resources would be limited to those resources that are classified as

SNSSCs. Proposed Rules Section V.A.

ii. Summary of Comments

The Companies stated that the SNSSC threshold for the mandatory filing of an RFP was included in the Proposed Rules because (1) it was included in the Regional IRP Procedures, (2) it will reduce the regulatory complexity of IRM proceedings, and (3) it will enhance the opportunity for certain smaller resources to compete in the resource marketplace (Companies Final Comments at 5). The Companies added that, "while the provision adds desirable flexibility to the process, it does not remove the Department's authority to review resources that fall below the threshold under the authority granted by other regulatory provisions" such as G.L. c. 164 § 94A and 220 C.M.R. §§ 9.00 et seq. (id.).

CONUG stated that, although it "supports the proposition that electric companies need not file an RFP if the company's evaluation of resource need indicates that capacity is not needed until the end of the forecast period, ... [it] believes that the IRM regulations should clearly define when an RFP is required" (CONUG Initial Comments at 29-30). CONUG recommended that a company be required to include an RFP in its filing if the identified resource need occurs during the first eight years of the forecast period (id.). CONUG stated that, although "there are some instances where capacity need is too insignificant to warrant the filing of an RFP," it cannot accept the proposed SNSSC threshold (id.). CONUG recommended, as an alternative threshold, that a company be required to submit an RFP when its need represents at least one percent of peak load, subject to a floor of five MW and a ceiling of 20 MW of projected need (id. at 31). Finally, CONUG noted that the Proposed Rules do not address the circumstance in which a

company's IRP filing does not include an RFP, but, during the course of adjudication, the Department finds that such a filing should be made (id. at 31-32). CONUG asserted that, in order to avoid unnecessary delays in resource procurement, the revised IRM regulations should require companies, "in certain circumstances, to supplement their initial filing with an RFP prior to the conclusion of the twelve-month review period allowed for in the Proposed Rules" (id.).

The Attorney General stated that he supports "some flexibility" in the RFP process. However, the Attorney General stated that, because the 30 MW threshold represents a wide difference in the percentage of peak load for each of the companies, this threshold "is particularly a concern for the smaller electric companies" (Attorney General Initial Comments at 16-17). The Attorney General asserted that there must be "some rational and objective basis for a threshold that is tied to some characteristic" of each of the companies (id. at 17). As such, the Attorney General recommended that the size threshold of a SNSSC be revised in one of two ways: (1) greater than one percent of peak load, subject to a floor of five MW and a ceiling of 20 MW of projected need; or (2) greater than 0.5 percent of a company's peak load or 7.5 MW, whichever is higher (id. at 19-20). The Attorney General recommended that the definition of a SNSSC be further amended so that it (1) applies to resource commitments that "extend for a period of one year or longer" and (2) includes all company-owned generation (id. at 19-20).

CLF stated that the Department should reject the 30 MW threshold because it would provide companies the opportunity to procure a "significant" resource block without demonstrating that such resources are least-cost, as determined through the IRM process (CLF Initial Comments at 3, 14).

iii. Analysis and Findings

The Department notes that the classification of resources as SNSSCs was first introduced and adopted in the Regional IRP Procedures. The Department found that, because of the complexity of coordinating the reviews of the resource plans of the regional, multi-jurisdictional companies by the various states' public utilities commissions, it was appropriate to exclude small or short-term resources from the Department's review. D.P.U. 93-138, at 11-12. In addition, because the cost recovery for all resources procured pursuant to the Regional IRP Procedures is addressed by the FERC, the inclusion of SNSSCs in the Regional IRP Procedures did not affect the Department's current authority to establish reasonable levels of cost recovery for resources acquired by these companies. Id.

The Department finds that it is not appropriate to classify resources as SNSSCs and "non-SNSSCs" in the Revised IRP Rules for the following two reasons. First, the petitioning companies in the instant proceeding are subject solely to the Department's jurisdiction; thus, there is no problem related to multi-jurisdictional coordination. Second, the inclusion of SNSSCs in the revised IRP rules would require the Department to address reasonable cost recovery levels for SNSSCs and non-SNSSCs through two separate proceedings. For resources classified as SNSSCs, cost recovery would be addressed through a company's IRP proceeding. For non-SNSSCs, cost recovery would be addressed pursuant to G.L. c. 164, § 94A, which, in order to render a contract valid, requires inclusion of a contract provision subjecting a long-term contract to rate case review unless that contract is presented for and receives Department approval. The Department finds that review of cost recovery in two different proceedings would

create unnecessary regulatory burdens. Accordingly, the Revised IRP Rules do not include the classification of resources as SNSSCs and non-SNSSCs.

However, the Department recognizes that, for small or short-term procurements, the costs associated with a formal adjudication of an RFP could outweigh the benefits that would be gained through the issuance of the RFP. The Department finds that it is appropriate to weigh these costs and benefits on a company- and case-specific basis. Therefore, the Revised IRP Rules include language that would allow a company the opportunity to demonstrate that it is not in the ratepayers' interest to submit a proposed RFP with its IRP filing for Department review. Revised 220 C.M.R. § 10.03(8)(e)1.c.

As stated in Section II, above, the Department remains fully committed to the continuing development of a competitive market for wholesale generation. Accordingly, in those instances when a company is not required to submit a proposed RFP with its IRP filing, the company would still be expected to identify and procure safe, reliable, least-cost resources through a competitive solicitation. As stated in D.P.U. 86-36-G at 32,

> [u]nless the Department is provided information about the range of potential resource options available to the electric company when making resource acquisition decisions, the Department cannot effectively determine whether the electric company's resource acquisition decisions are consistent with the company's statutory obligations or with established regulatory policies.

Therefore, a company that does not utilize a competitive solicitation as the vehicle to identify least-cost resources would bear the burden of demonstrating that its proposed resources are, in fact, least-cost.

Finally, the Revised IRP Rules provide that, when a company does not submit a proposed

RFP with its IRP filing, the company must be prepared to submit an RFP for Department review within 60 days, in the event of the Department so ordering. Revised 220 C.M.R § 10.04(3).

c. Design of the RFP and the Resource Solicitation Process

i. Description

With respect to the design of the RFP and the resource solicitation process, the primary difference between the Proposed Rules and the existing IRM regulations is the elimination of IRM's prescribed RFP scoring criteria and resource solicitation procedures. The existing IRM regulations prescribe a minimum of seven categories of criteria that a company must include in its RFP ranking system.[19] The Proposed Rules do not specify any ranking system criteria, stating that "[e]ach company shall adopt a ranking system to evaluate project proposals ... [that] enable[s] the company to evaluate all resources, including renewables and conservation, according to consistent criteria." Proposed Rules Section III.H.2.c. Similarly, while the existing IRM regulations specify a six-step process by which a company shall develop its proposed award group,[20] the Proposed Rules do not specify a particular resource selection process, stating that the "[c]ompany shall rank all proposals that pass the thresholds set out in the RFP and shall negotiate with developers to determine" the award group. Proposed Rules Section V.B.3.

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[19] These categories are price, quality of output or savings, timing of output or savings, project feasibility, fuel diversity, externalities, and best available control technology emission standards. Existing 220 C.M.R. § 10.03(10)(d)3).

[20] These steps are screening, verification, initial ranking, improved initial ranking, negotiations, and development of the proposed award group. Existing 220 C.M.R. § 10.04(3)

ii. Summary of Comments

The Companies stated that the highly detailed approach included in the IRM regulations with respect to the design of an RFP "is unwarranted because, if an RFP is called for under the Proposed IRP Rules, there is every incentive for the parties to devise a fair and workable RFP and such an RFP would, of course, remain subject to the Department's ultimate oversight" (Companies' Reply Comments at 20). The Companies added that they have a "powerful incentive to conduct a fair RFP because ... [i]t is critically important for a utility that the lowest cost resource be chosen in this competitive environment" (id. n.8).

CONUG stated that, "[a]s a general proposition, CONUG supports those aspects of the Companies' proposal which give greater flexibility to utilities in the development of an RFP .... Increased flexibility must not come, however, at the expense of responsible regulatory oversight" (CONUG Initial Comments at 34). Consistent with this, CONUG stated that it does not oppose elimination of certain of IRM's specified project selection criteria and ranking system, provided that the Department require that the ranking system in RFPs "be transparent and be designed (a) to avoid utility self-dealing, (b) to evaluate all resources on equal footing, and (c) to result in a reliable, least-cost mix of resources" (id. at 33). CONUG added that a company's RFP should include all information relative to the characteristics of a company's identified resource need, as is currently required under 220 C.M.R. § 10.03(8)(b) (id.). CONUG also stated that the Proposed Rules should include certain language from the existing IRM regulations regarding RFPs and the resource solicitation process because such inclusion would not impose a burden on the Companies

(id. at 29, 33, 37-38).[21]

With respect to the resource selection process, CONUG stated that the Proposed Rules' elimination of the current strict guidelines regarding a company's RFP administration, as well as the electric companies' obligation to document the resource selection process, presents a problem because (1) it significantly limits the ability of participants and regulators to ensure that all proposals have been treated fairly, and (2) it would be difficult to determine whether a given resource is part of the mix of resources most likely to result in a reliable supply of electric service at least cost (id. at 36-37). CONUG asserted that, at a minimum, electric companies should be required to provide documentation and justification of the selection of the preliminary award group if requested in an adjudication (id. at 37).

MEEC stated that, "[a]s a general matter, the elimination of IRM's detailed requirements [regarding RFPs and contracting procedures] would represent a considerable improvement ... [because] many of IRM's provisions simply add costs and complexity to the resource procurement process" (MEEC Reply Comments at 2). MEEC added, however, that the Department should preserve the language from the existing IRM regulations that requires an RFP to contain all information necessary for project developers to understand and compete fairly in the solicitation process (id.).

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[21] CONUG specifically cited language from 220 C.M.R. § 10.03(10)(a), "RFP Purpose;" 220 C.M.R. § 10.03(10)(c), "Contents of the RFP;" and 220 C.M.R. § 10.04(2)(b)(2), "Solicitation Process Notice" (CONUG Initial Comments at 29, 33, 37-38).

iii. Analysis and Findings

In prior investigations leading to the adoption of the existing IRM regulations, the Department sought to establish an appropriate balance between flexibility in resource solicitation, and clarity and reviewability of the company's resource selection process. D.P.U. 86-36-F at 62, 67; D.P.U. 86-36-G at 33-34, 40, 43. The Department determined that it would be appropriate to allow electric companies to apply their judgment in selecting resources, while ensuring that an electric company's resource selection process was clearly articulated at the outset of the resource solicitation. D.P.U. 86-36-G at 40, 43. The Department stated that clearly articulated selection criteria and methods would reduce the danger of self-dealing, provide guidance to bidders in their development of projects, and enable the Department to review the company's application of the criteria and method of selecting resources. Id.

The Department agrees with CONUG's comments that it is more important that the selection process be clearly laid out in the RFP before it is implemented than to have all the specific requirements and procedures that currently are set forth in 220 C.M.R. § 10.03(10). The ability of bidders to respond to a resource solicitation effectively and the ability of the Department to review a company's resource selection to ensure that it is least-cost and unbiased rest on a clear presentation of the electric company's proposed criteria and method for selecting resources prior to the actual solicitation of resources. The Revised IRP Rules include the requirement from the Proposed Rules that each company adopt a ranking system to evaluate a project proposal on the basis of the project proposal's ability to provide safe, reliable, least-cost electric service. Revised 220 C.M.R. § 10.03(8)(e)2.a. To ensure that a company's proposed resource selection criteria

will be clearly presented, the Revised IRP Rules include additional language stating that an RFP shall contain the information necessary for project developers to understand and compete fairly in the resource solicitation. Revised 220 C.M.R. § 10.03(8)(e)1.e. In addition, the Revised IRP Rules require that the RFP ranking system shall (1) be based on the characteristics of the resource need identified in the company's integrated resource plan, (2) incorporate all of the criteria that will be used to evaluate project proposals, (3) avoid self-dealing, and (4) enable the company to evaluate all resources according to consistent criteria. Revised 220 C.M.R. § 10.03(8)(e)2.b. Finally, to ensure the reviewability of a company's resource selection process, the Revised IRP Rules require that a company submit documentation regarding this process concurrent with the submittal of information concerning its preliminary award group. Revised 220 C.M.R. § 10.05(1)c. The Department notes that as incentive proposals are adopted, the concern about self-dealing should diminish.

d. Company-Sponsored Project Proposals[22]

i. Description

With respect to company-sponsored project proposals, the Proposed Rules differ from the existing IRM regulations in three ways. First, the Proposed Rules would eliminate the current requirement that a company submit a portfolio of supply and demand resources that is "designed to meet the entire resource need identified [in the company's filing] ... at the lowest cost ...."

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[22] The Department notes that both the existing IRM regulations and the Proposed Rules use the term "Initial Resource Portfolio" to refer to project proposals that an electric company submits in response to an identified need. The Department has replaced this term with the term "company-sponsored project proposals" to better reflect the requirements included in the Revised IRP Rules.

Existing 220 C.M.R. § 10.03(5)(a). The Proposed Rules would make this submittal optional, stating that, "[i]n the event that ... the electric company submits its own project proposal to meet all or part of the identified resource need, the electric company shall submit an initial resource portfolio ...." Proposed Rules Section III.H.3.

Second, the Proposed Rules would eliminate language in the existing IRM regulations that specifies several "elements" that must be identified in a company's initial resource portfolio. Existing 220 C.M.R. § 10.03(5)(a)6. One of these elements, "electric company modifications to generating units requiring preapproval by the Department," requires a company to include any proposed unit repowering or life extension in its initial resource portfolio. Id.

Finally, the Proposed Rules would eliminate the current requirement that "the initial resource portfolio shall include all cost-effective C&LM programs for all customer sectors and subsectors." Existing 220 C.M.R. § 10.03(5)(a)5. The Proposed Rules state that any DSM "resources identified in the initial resource portfolio shall ... include cost-effective C&LM programs for all customer sectors and subsectors." Proposed Rules Section III.H.3.b.

ii. Summary of Comments

CONUG stated that, in general, it endorses the reduced requirements associated with a company's initial resource portfolio (CONUG Initial Comments at 28-29). However, both CONUG and the Attorney General asserted that a company's initial resource portfolio should include any life extension or repowering of an existing generating unit that would require Department preapproval (id.; Attorney General Final Comments at 6).

CLF stated that companies should be required to develop DSM programs that would be

implemented in the absence of market participation in a DSM RFP and that these programs should be included in a company's initial resource portfolio (CLF Initial Comments at 13).

MEEC stated that, "[i]n the worthy effort to streamline" the existing IRM regulations, the Proposed Rules delete the "critically important" requirement that electric companies include cost-effective DSM programs for all customer sectors in their initial resource portfolios (MEEC Reply Comments at 3). In addition, MEEC stated that the Department should not require parallel supply- and demand-side RFPs, but companies should have a choice between omnibus RFPs and RFPs for delivery of services for a designed program (Tr. 2, at 123-129). MEEC stated that the proposed procedures did not appear to allow companies to select between these options (id.).

iii. Analysis and Findings

The filing requirements in the existing IRM regulations regarding the initial resource portfolio were developed when there was substantial uncertainty regarding both the size and viability of competitive generation and DSM markets. Those markets did not appear to be sufficiently mature to allow electric companies to rely on them exclusively to provide the least-cost mix of resources to ratepayers. D.P.U. 86-36-G at 36. Thus, electric companies were required to submit a resource portfolio with their initial filings that represented the companies' determination of the mix of resources that would meet their entire projected need and would best satisfy their own project selection criteria, as well as providing useful information to potential bidders. Id. In addition, the filing requirements were designed to "balance the need to make sufficient information available to the public to prevent self-dealing, and the desire to ensure that utility-sponsored projects not be put at a competitive disadvantage." D.P.U. 89-239, at 16, citing

D.P.U. 86-36-G at 37.

As discussed in Section III.5.c, above, the wholesale generation market has grown increasingly competitive since the issuance of the existing IRM regulations. The Department therefore finds that it is no longer necessary to require electric companies to submit a portfolio of project proposals that would meet the identified resource need. Accordingly, the Revised IRP Rules do not include this requirement.

However, if an electric company plans to meet a portion of an identified need before the submittal of its next IRP filing with a project that is owned by the electric company or an affiliate of the electric company, the Revised IRP Rules retain the language from both the existing IRM regulations and the Proposed Rules that the information on any proposed project must be provided in the same form as information required of a bidder that is unaffiliated with the company. Revised 220 C.M.R. § 10.03(8)(f)1. In addition, the Department expects that any proposal by an electric company to (1) extend materially the useful life of a generating plant through major investment in that plant, (2) increase materially the capacity of a generating plant, or (3) repower a company-owned generating plant, would be submitted pursuant to this section so that it could be subject to competition through the RFP process.

Regarding the requirement in the existing IRM regulations that electric companies include DSM programs for all customer sectors and subsectors in their initial resource portfolios, the Department emphasizes that electric companies are still required to provide safe, reliable, least-cost electric service to their ratepayers, even though companies will no longer be required to submit initial resource portfolios. In those instances where DSM represents a least-cost option

when resources are compared on an integrated basis, electric companies should consider DSM in the mix of resources in their integrated resource plans.[23] The manner in which competitive bidding is used to identify least-cost resources can be company-specific and is not prescribed by the Department.

D. Department Review of the Integrated Resource Plan

1. Description

The Proposed Rules would eliminate language in the existing IRM regulations that grants the Department the authority to "adjust or modify" a company's evaluation of resource need consistent with its findings on the company's demand forecast and resource inventory. Existing 220 C.M.R. § 10.03(8)(a). The Proposed Rules state that, "[c]onsistent with its findings on the demand forecast, the resource inventory, and the reliability planning methodology, the Department, in its Order, may reject, approve, or conditionally approve the electric company's evaluation of resource need." Proposed Rules Section III.G.1. If the Department makes an adverse ruling on an electric company's integrated resource plan, the Proposed Rules require that the company, within 30 days of such ruling, submit a compliance filing that rectifies any cause for rejection or conditional approval. Proposed Rules Section IV.D.

2. Summary of Comments

The Companies stated that they view "this proposed change not as an issue of Department

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[23] The Revised IRP Rules retain the provision, included in the Proposed Rules, that any DSM resources identified in a company's resource procurement plan should include "cost-effective DSM programs for all customer sectors and subsectors." Revised 220 C.M.R. § 10.03(8)(e)2.

authority, but rather as the most effective way to accomplish ... [the] desired result ... [of] a more streamlined and workable process, less oriented to micro-management and contentious hearings regarding every sub-issue, and more oriented towards obtaining reasonable results for ratepayers" (Companies Reply Brief at 25). The Companies asserted that a standard of "reject, approve, or conditionally approve" is (1) "inherently more workable and less onerous for the Department to administer," and (2) "a far more traditional and well understood process of reviewing a utility proposal" than the existing standard (id.).

The Attorney General, CLF, and CONUG stated that the Proposed Rules should be revised to include the Department's current authority to adjust a company's demand forecast, resource inventory, and determination of need. These commenters asserted that, in the absence of that authority, the time-frame for resource acquisition could be unnecessarily lengthened if companies do not respond in an appropriate manner to the Department's directives (Attorney General Initial Comments at 20-21; CLF Initial Comments at 4; CONUG Initial Comments at 22, 26, 27). In addition, CONUG recommended that the Proposed Rules be revised to include the Department's current authority to modify a company's proposed RFP (CONUG Initial Comments at 34-35).

3. Analysis and Findings

In the proceedings that led to the adoption of the existing IRM regulations, the Siting Council determined that it may be necessary to modify elements of a company's demand forecast or resource inventory. 21 DOMSC at 116-117, 131. In the past, the Siting Council and the Department have often required companies to modify demand forecasts. The Siting Council also

has modified a company's resource need determination. Boston Edison, 24 DOMSC 125, 302 (1992).

Under the Proposed Rules, the Department would not modify a company's resource need determination based on its findings regarding the company's demand forecast and resource inventory. Instead, the Department, in its Order, would reject, approve, or conditionally approve a company's determination of resource need and the company would comply with the Department's directives in a filing to be submitted within 30 days of the Order.[24] The Department concludes that this approach should not affect the Department's ability to ensure that a company's resource planning and procurement activities are consistent with its obligation to provide safe, reliable, and least-cost electric service to ratepayers. Therefore, the Department retains this provision in the Revised IRP Rules. Revised 220 C.M.R. § 10.04(4).

The Department does not share the concern of the Attorney General, CLF and CONUG that, without the Department's ability to implement its own modifications, the IRP proceedings could be delayed because of a company's refusal to comply with any Department directives. Nonetheless, while it is appropriate to place responsibility for modifying elements of the need determination with the Companies, the Department agrees that it would be unacceptable for a company to discharge that responsibility in a way that would inappropriately delay resource procurement. As stated above, the Revised IRP Rules require that a company comply with any Department directive within 30 days. The Department will use its existing authority to ensure

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[24] Under the Revised IRP Rules, the Department is required to issue its order on a company's resource plan within nine months of the filing of the plan. Revised 220 C.M.R. § 10.04(2).

compliance with such directives.

E. Department Review of Proposed Resources

1. Description

The Proposed Rules differ from the existing IRM regulations with respect to the manner in which the Department would review a company's proposed resource acquisitions. Under the existing IRM regulations, the Department's review of a company's proposed resources is divided into two parts. During Phase III of an IRM proceeding, the Department reviews a company's resource solicitation process and the company's proposed award group to ensure that the award group contains the mix of resources that is most likely to result in a safe, reliable, least-cost supply of electric service. Existing 220 C.M.R. § 10.05(3). Only after Department approval of the award group is a company permitted to negotiate final contracts with project developers. Id. During Phase IV, the Department reviews "final contracts reached between the electric company and the project developers to determine whether they comply with 220 C.M.R. 10.00 and are in the public interest." Existing 220 C.M.R. § 10.06(3)(a). The existing IRM regulations are designed so that the Department's Phase III review occurs within a 90-day period, while its Phase IV review of each proposed contract occurs within a 30-day period.

Under the Proposed Rules, the Department would not review a company's proposed award group. Instead, a company would develop "a preliminary award group" to fill the resource need identified in the RFP(s) and would submit this preliminary award group to the Department for "informational purposes." Proposed Rules Section V.B.4. A company would not be required to receive Department approval of its preliminary award group before entering into final contracts

with project developers. Id. The Department would review the contract for each proposed resource to ensure that the resource (1) was part of the mix of resources that has the "highest likelihood" of resulting in safe, reliable, least-cost electric service, and (2) was based upon the results of the resource procurement plan approved by the Department in the company's IRP filing. Proposed Rules Section V.C.2. The Department's review of proposed resources would be limited to those resources that are classified as SNSSCs and the review of each proposed contract would occur within a 120-day period. Id.

2. Summary of Comments

The Companies contended that, because the Proposed Rules do not specify "exactly where or when" the Department shall review for approval the resources that result from the RFP process, the Department is afforded "the needed flexibility to respond as warranted in a given situation" (Companies Final Comments at 8). The Companies stated that the Proposed Rules "are written from the perspective that it is unnecessary and counter-productive to specify at great length every detail and time frame under which the Department and the parties are to proceed and to anticipate every particular situation in advance" (id. at 9). Rather, the Companies stated that the Proposed Rules contain "important safeguards intended to ensure a fair and appropriate end result, including the Department's authority to approve the RFP and the resources that are chosen pursuant to the approved RFP" (id.).

CONUG stated that it is "critical that any version of IRM reform include a provision allowing the Department the opportunity to review an electric company's selection of the award group" to determine whether a company's RFP was administered consistent with the approved

resource plan (CONUG March 20, 1995 Letter). CONUG stated that this review should occur at the time that the preliminary award group is submitted to the Department in order to allow the Department the opportunity to address any concerns that were identified regarding the administration of the RFP prior to contract negotiations (id.). CONUG noted that it does not view a review of the preliminary award group as being necessary in all situations; for example, if no party comments on a company's administration of its RFP, then a Department review may not be necessary (id.).

The Attorney General asserted that Department review of the RFP administration and the award group selection is required to ensure that a particular mix of resources is most likely to result in a reliable, least-cost supply of electric service (Attorney General Final Comments at 4). The Attorney General contended that, without such a review, the Department "would have to jump to the unsupported conclusion that the RFP solicitation was administered in accordance with the RFP, and that the RFP solicitation was administered fairly and appropriately to all potential providers" (id. at 2-3). The Attorney General argued that the Department's review should occur before the filing of the first signed contract because individual contracts reviews would not be the proper time for the Department to determine whether the RFP was administered fairly and in a manner consistent with the RFP (id.).

3. Analysis and Findings

When the existing IRM rules were being developed, the Department stated that the scoring system employed to develop the initial ranking of projects that were bid through an RFP "must be clearly articulated so that potential bidders understand the trade-offs between different

criteria .... Similarly, the criteria and [their] application must be sufficiently detailed to allow the Department to evaluate an electric company's initial ranking." D.P.U. 89-239, at 32. The Department was concerned that a balance be maintained between flexibility on the one hand, and reviewability and protection from self-dealing on the other. Id. at 32-33. The Department found that affording electric companies some flexibility in the process of choosing resources was appropriate. Id. at 33.

Since the IRM rules were promulgated in August 1990, the electric utility industry has undergone a major change. Non-utility generation has grown rapidly, as has the energy efficiency industry. Power plants can be constructed in ever-shorter time frames. Flexibility to respond to these changing conditions -- both for the electric utility companies and for bidders in resource solicitations -- is critical. In addition, bidders have become sophisticated enough to determine whether an RFP process was transparent and was carried out fairly and in accordance with the terms of the RFP.

The Department concludes, and the Revised IRP Rules state, that review of a company's RFP administration and the resulting preliminary award group is required only when an RFP bidder, or another party, demonstrates that such a review is warranted. In those instances when such a demonstration is not made, companies shall submit the preliminary award group and documentation of the resource selection process for informational purposes only. Revised 220 C.M.R. § 10.05(1)(c). In all instances, the Department will review individual contracts to "determine whether the procurement of a proposed resource is consistent with (1) the resource procurement plan approved in the Department's review of the electric company's integrated

resource plan, and (2) the purpose of these rules, as established in 220 C.M.R. § 10.01(1)." Revised 220 C.M.R. § 10.06(1). As part of this review, the Department may hold adjudicatory hearings or technical sessions as the situation requires. Id. A company-owned resource subject to 220 C.M.R. §§ 9.00 et seq. will be reviewed pursuant to those regulations, in addition to being reviewed according to the criteria listed above. The process specified herein should be sufficiently transparent for all potential bidders to compete fairly, and should provide the flexibility necessary for companies to compete in the current marketplace, while at the same time protecting ratepayers and bidders from unfair company self-dealing.

IV. ORDER

After due notice, hearing, and consideration, it is hereby

ORDERED: That 220 C.M.R. be amended by replacing the existing Part 10.00 with a new Part 10.00, appended hereto; and it is

FURTHER ORDERED: That the Secretary of the Department attest to a true copy of the appended Part 10.00 and transmit said attested true copy to the Office of the Secretary of State for the Commonwealth for publication in the Massachusetts Register for inclusion in the Code of Massachusetts Regulations, and that said new Part 10.00 shall be effective upon publication in the Massachusetts Register.

By Order of the Department,

_____
Kenneth Gordon, Chairman

_____
Mary Clark Webster, Commissioner

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Janet Gail Besser, Commissioner